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UNCLAS SECTION 01 OF 05 VIENNA 000764

SIPDIS

SENSITIVE
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STATE FOR INL, EUR/ERA, EUR/PGI AND EUR/AGS
DOJ FOR BRUCE SWARTZ; DHS FOR A/S ELAINE DEZENSKI

E.O. 12958: N/A

TAGS: [PREL](#) [PTER](#) [EUN](#) [KCRM](#) [SNAR](#) [EFIN](#) [ETTC](#) [AU](#)

SUBJECT: MARCH 2-3 U.S.- EU SENIOR LEVEL TALKS ON JUSTICE,
FREEDOM AND SECURITY

REF: VIENNA 540

VIENNA 00000764 001.2 OF 005

11. (SBU) Summary. The Senior Level U.S.-EU Informal Meeting on Justice, Freedom, and Security (JLS) was held in Vienna March 2 and 3, and covered the full range of JLS issues on migration, borders and visas, counter-terrorism and security, and law enforcement cooperation. Among the key outcomes of the meeting, both sides agreed to coordinate responses to the pending ECJ decision on PNR; to work towards finalizing a U.S.-Eurojust agreement; to address the sharing of classified information; to deepen coordination on terrorist financing; to discuss member states, implementation of the EU data retention decision; and to continue a dialogue on JLS-related counterterrorism, human rights, and international law issues. U.S. agreed to explore options for facilitating visa issuance processes in VWP candidate countries, while EU will consider sharing Schengen accession review information. U.S. raised its significant concerns over the draft EU data protection framework and its potential impacts on law enforcement and judicial cooperation. Delegations discussed potential topics or deliverables for the upcoming U.S.-EU JHA Ministerial and U.S.-EU Summit, including in the areas of consequence management and lost/stolen passports. (End Summary)

12. (SBU) Austrian and Finnish Presidencies. Austria, in its capacity as EU Presidency and meeting host was the most hands on Chair in recent memory. They repeatedly questioned EU positions on which we expressed frustration and undertook to attempt to break through apparent impasses and speed up EU actions. While acknowledging the difficulty of resolving cross-cutting issues such as different approaches to data protection, they consistently suggested action-oriented follow-up. In their welcome statement, the Austrians (Sandrisser) urged that, in light of the EU's new JLS External Strategy, the U.S. and EU should intensify their cooperation in the field, citing the EU invitation for U.S. participation in the May 4-5 Ministerial on Internal Security as one opportunity. Below are highlights from each of the three sessions. Finnish representatives, who said they were already preparing for their Presidency, did not participate actively in the discussions and only at the meetings end said they thought they would have resources to host a JLS meeting

in Finland in July. The U.S. Delegation was headed by Deputy Assistant Attorney General Bruce Swartz, INL DAS Elizabeth Verville and DHS DAS Elaine Dezenski. See paras 23 and 24 for full list of participants.

MIGRATION, BORDERS AND VISA ISSUES

¶3. (SBU) USDEL (Dezenski) described CBP's migration to a push8 system for obtaining Passenger Name Records (PNR) per the U.S.-EU PNR agreement, noting that three European airlines (Aer Lingus, Austrian Air and KLM) have completed the transition, but cautioned that the project must also build in the need to go back to air carriers for further data, if necessary (i.e., unscheduled PUSH).

¶4. (SBU) With regard to the anticipated ECJ ruling on the PNR agreement, the Commission (Margue) urged that both sides stay in close touch (including via DVC) in order to prepare the groundwork for whatever verdict may emerge. USDEL agreed.

¶5. (SBU) Margue also urged DHS not seek to renegotiate PNR agreement at this sensitive period as the Commission went as far as it could go last time.⁸ Dezenski replied that it was premature to discuss specific changes until we know what the ECJ will decide; the important thing was to continue to cooperate and that carriers continue to provide PNR to CBP.

¶6. (SBU) EU representatives raised the expansion of VWP to the 10 EU members not currently in the program, citing the Commission's January report on visa reciprocity and urging some sort of benchmarks (e.g., visa facilitation, reduction of visa fees, timelines) by U.S. before the issuance of their next report in June. EUDEL reiterated the Commission's position that the Roadmap remains an acceptable tool, but that it needs to be strengthened considerably (with a

VIENNA 00000764 002.2 OF 005

particular emphasis on considerably). He also noted that if progress cannot be illustrated by June, the Commission will face significant pressure to propose a more concrete response. USDEL (Dezenski) reviewed negative Congressional attitudes towards VWP, described recent Rice-Chertoff efforts at visa facilitation, and urged that we make use of new and improved technology. She noted we also shared the goal of visa reciprocity and asked if it were possible to share Schengen assessment data towards this end. The Commission will undertake to see if this is possible, so long as member states agreed. We also asked what steps the non-Visa Waiver Program countries were taking in order to achieve compliance with our requirements. The Commission acknowledged that it did not know but would inquire.

¶7. (SBU) On document security, both sides highlighted that progress is being made. The EU was surprised U.S. tourist E-passports will not be issued until end of 2006; all EU member states will be required to incorporate facial recognition in passports by August 28, 2006. Furthermore, the issue of data protection has complicated the implementation of VIS with over 300 amendments to a proposed Directive already offered in the European Parliament. On the issue of fingerprint collection, Dezenski remarked that while the decision to begin collecting 10 fingerprints as part of US-VISIT and visa issuance was made last year, no final decision has been made to collect the prints prior to departure, despite media reports to the contrary.

COUNTER-TERRORISM AND SECURITY

¶8. (SBU) USDEL (Verville) urged greater U.S.-EU cooperation to leverage available instruments and mechanisms in the fight against crime and corruption at the global, regional and bilateral levels. She emphasized the need for creative new

approaches to U.S.-EU law enforcement cooperation to parallel advances in intra-EU cooperation but cautioned that such advances not be permitted to undermine existing U.S. bilateral law enforcement cooperation with member States. She urged that the JLS talks focus on resolving cross cutting issues such as data protection. The Austrians (Hager) urged the EU to treat the U.S. as a &privileged partner& and not to exclude us from the data protection debate.

¶9. (SBU) USDEL (Swartz) reviewed summit follow-up actions, urging greater cooperation in detection and prosecution measures in regards to counterterrorism policy and stressed the need not to undercut U.S. ability to share information bilaterally. He also suggested the two sides work on a study of consequence management; the Austrians (Hager) noted this could be a possible summit topic. USDEL (Dezenski) suggested exchange of &best practices& on how to stimulate a public-private dialogue on the subject.

¶10. (SBU) The Austrians (Hager) described the EU's work on Recruitment and Radicalization, including a dialogue of cultures and religions seminar and other meetings. Swartz also described DOJ work in this field and suggested the two sides cooperate closely and share experiences. He asked for a list of the meetings and their agendas so that appropriate U.S. experts could be selected to participate.

¶11. (SBU) On terrorist financing, USDEL (Richard) urged both sides take broader view of the mandate than just designation and suggested that a list of upcoming meetings would help prevent duplication of effort and training. He cited the importance of analysis of terrorist accounts. The Commission said it would welcome a U.S. presentation on non-profit organizations (i.e., charities).

¶12. (SBU) With regard to extremists, use of the internet, USDEL (Swartz) noted the need to determine if the conduct is criminal in nature and the necessity to have the tools in place to trace and recover messages. Burrows (DOJ) noted that we strongly supported the Council of Europe's Cyber-crime Convention, but were troubled by the idea of a cyber terrorism protocol, which had no added value. Both the Presidency and the Commission noted that there was no EU

VIENNA 00000764 003.3 OF 005

position on the issue. The Austrian Presidency stated that it would oppose development of the COE cyber terrorism protocol.

¶13. (SBU) On the EU Data Retention Directive, USDEL (Richard) noted our desire to ensure that when Member States consider national legislation concerning procedures for law enforcement to gain access to the retained data, that they include provisions for third countries likewise to gain access. U.S. indicated its intent to take this matter up with Member States on a bilateral basis. He indicated an expectation that existing MLATS would be available for gaining access to the data, but USDEL pointed out we didn't have MLATs with all Member States, and in any case they would not address our real-time needs in this area. Commission said it would be willing to organize an expert meeting with the U.S. to review its concerns and the Council (De Kerchove) also urged the U.S. to discuss this at EU level before it did so bilaterally.

¶14. (SBU) Austrians (Hager) noted ongoing COE and European Parliamentary (EP) investigation of U.S. activities with regards to U.S. counterterrorism efforts and human rights and international law; USDEL (Swartz and Propp) pointed out that this has been discussed at high levels and State Legal Adviser Bellinger had recently visited Brussels to discuss it further. Propp noted that the U.S. was open to further dialogue, but added that it was difficult to see how the COE/EP investigations would contribute to this. Council representative (De Kerchove) called Bellinger visit a good first step, but urged that the dialogue continue, lest the

issue affect U.S.-EU law enforcement cooperation. Both the Council and the Austrians indicated that this subject could be expected to be raised at the JHA Ministerial as well.

¶15. (SBU) With regard to Lost and Stolen passports, USDEL (Dezenski) described a pilot project with Interpol to provide DHS officials with the ability to screen all incoming passengers against the Interpol Stolen and Lost Travel Documents database in real time. She urged robust reporting by all states and an improvement of standards, such as prompt reporting of lost and stolen documents, and 24 hour points of contact, and suggested that non-personal data such as date of issue might also be included. Austrian representative (Strondl) replied EU was also supporting Interpol and that EU member state reporting has improved since January. He also indicated that a broader use of the system at border crossing points and ports of entry based on the Swiss model will be included in SISII. Both sides mentioned this as possible summit or ministerial deliverable, and A/S Dezenski praised the move to link INTERPOL connections as part of the SISII architecture.

¶16. (SBU) The USDEL (Dezenski) offered to facilitate a port tour and meeting with CBP officials responsible for training for Frontex and other EU officials, following up on previous engagements with that office. Recognizing that Frontex is an independent agency, additional outreach directly to Frontex staff will be initiated.

JUSTICE AND LAW ENFORCEMENT ISSUES

¶17. (SBU) A lengthy debate on the sharing of classified information and the problems related to the negotiation of a U.S. cooperation agreement with Eurojust led to a further exchange on the problems associated with the different approaches of the U.S. and the EU to data protection. Despite U.S. skepticism Eurojust said it would attempt a redraft of the proposed agreement (based on OECD data protection guidelines) for further discussion with the U.S. USDEL (Swartz and Richard) expressed their frustration that the Eurojust agreement could not be modeled on the successful U.S.-Europol cooperation agreement. In response to questions from Austria and the Council, Swartz said U.S. could agree to a cut and paste version of the Europol agreement and expressed a willingness to meet with appropriate EU officials to further discuss U.S. concerns. The Council questioned Eurojust on its insistence on an additional layer of data

VIENNA 00000764 004.2 OF 005

protection requirements and suggested that Eurojust present a redraft of the agreement based on the Europol agreement to the ministers and ask for their support, even if some Eurojust data protection experts did not approve of the language. In other words, get on with it.

¶18. (SBU) The Presidency agreed to support U.S. efforts to obtain the signature of all 25 member states) and in particular Italy and Malta) to the bilateral protocols implementing the U.S.) EU MLAT before the end of the Austrian Presidency. The Council agreed to prepare a report on the status of member state efforts to ratify the U.S.-EU agreements and bilateral protocols.

¶19. (SBU) A detailed discussion led by USDEL Richard followed concerning the proposed Framework Decision on sharing police and judicial information. The U.S. expressed its concern that existing sharing arrangements with 3rd parties would be jeopardized. The EU did not take issue with the proposition that the proposal would significantly alter the current way in which we exchange information at police and judicial levels. The EU noted that so far three different approaches are on the table in their internal discussions: 1) delete entirely any reference in the text to sharing with third countries; 2) adopt the approach set forth

in the current proposal; or 3) make the basis for sharing with third countries even more rigorous. We were encouraged to make our views known before any decisions are made by the EU. The EU suggested that existing MLATs would probably be grandfathered in, but USDEL pointed out we don't have comprehensive MLATs with all EU countries, that non-binding MOUs and informal sharing arrangements also had to be protected from interference, and in any event subsequent protocols to such agreements would not be covered. USDEL expressed its great concern regarding this proposed Framework Decision, noting that it might undo all the bilateral law enforcement cooperation that both sides are dependent on.

¶20. (SBU) The Austrians (Hager) described the Presidency priorities related to the Western Balkans, which include an action-oriented paper on the region, and will culminate in the May 4-5 Ministerial in Vienna. He also noted that DEA Administrator Tandy had accepted an invitation to a May 31-June 2 workshop on &Drug Trafficking on the Balkan route.8 USDEL (Swartz and Verville) urged continued and closer cooperation in the region and underscored that the region remains a high priority for the USG. Verville welcomed EU plans for increased assistance as timely in view of our decreasing ability to provide technical assistance as countries become EU members. She noted our strong support over the years for SECI and the contributions of our International Law Enforcement Academy (ILEA) in Budapest and said that the U.S. was working on a future strategy for this region and would welcome ongoing dialogue as we develop this strategy.

¶21. (SBU) With regard to Afghan drugs, Hager indicated the Austrians were preparing an action-oriented paper on the problem and would welcome U.S. input and cooperation. Both sides agreed on further promoting the EU Counternarcotics Trust Fund at future meetings at the UN Office on Drugs and Crime, such as the upcoming Commission on Narcotic Drugs.

¶22. (SBU) On Europol cooperation, USDEL (Swartz and Richard) expressed regret that FBI liaison did not have full access to all the analytical work, nor could he participate in some of the meetings. The Austrians (Hager) requested additional information on the issue, but noted that not all Europol meetings were open to third countries.

¶23. (U) The EU delegation included: Austrian Ministry of Interior: Dr. Wilhelm Sandrisser (head, International Relations Department), Dr. Peter Widermann (SCIFA head), Berndt Korner, Robert Strondl (CATS national representative), Kurt Hager (CATS head), EU Coordination officers Elisabeth Wenger, Petra Linter, Carina Jany, Antonio Martino, Martin David (Multilateral Affairs) and Martin Weiss (EU delegation, Brussels); Austrian Ministry of Justice: Dr. Roland Miklau (CATS head), Ingrid Worgotter, Irene Gartner, Christian Pilnacek and Stefan Benner; European Commission: Tung-Li

VIENNA 00000764 005.2 OF 005

Margue (Director, General Affairs, DG JLS), Joannes de Ceuster (Head of Borders and Visas Unit), Lotte Knudsen (Head of External Relations Unit), Heike Buss (U.S. desk officer), Andrew Denison (U.S. desk officer, DG RELEX), Temo Baltazar (EU Delegation to U.S.), Bert Eleveld (Large-scale IT systems unit); European Council: Giles De Kerchove (General Director, Directorate 2), Paul Hickey (General Director, Directorate 1); Finland: Pentti Visanen (DG, Immigration, Ministry of Interior), Antti Pelttari, DG, Ministry of Interior), Kari Rantama (Deputy National Police Commissioner), Matti Joutsen; EUROJUST: Michael Kennedy

¶24. (U) The U.S. delegation included: Elizabeth Verville (INL DAS for Crime), Deputy Assistant Attorney General Bruce Swartz, DHA Assistant Secretary for Policy Development Elaine Dezenski, Kenneth Propp (L/LEI), Laura McKechnie (INL), Negah Angha (CA), Alessandro Nardi (EUR/ERA), Mark Richard (DOJ/USEU), Frank Kerber (USEU), Rebecca Bosley (USEU), George Hardy (SECI Center, Bucharest), Thomas Burrows (DOJ),

Benjamin Longlet (DOJ), Michael Scardavillle (DHS), James
Connell (American Embassy Vienna).

¶25. (U) This cable was cleared by the delegation.
McCaw